**CWP No. 1292 of 2006**

12.11.2007. Present: Mr.Kulbhushan Khajuria, counsel for the petitioner.
Mr.M.S. Chandel, Advocate General, with Mr.R.M. Bisht, Dy.A.G., for the respondents.

This writ petition is directed against the award of the Presiding Judge, Industrial Tribunal-cum-Labour Court, Dharamshala, passed in Reference No.31/2004, decided on 17.1.2006. One of the main grounds for rejecting the petition taken by the Industrial Tribunal-cum-Labour Court is that the re-engagement of the claimant has been made under the order of the H.P. Administrative Tribunal, which was set aside by this Court. The Industrial Tribunal-cum-Labour Court further held that the retrenchment has been effected in pursuance of the orders of this Court and, therefore, it (Industrial Tribunal-cum-Labour Court) had no jurisdiction to interfere in the matter which has been conclusively decided by the High Court of Himachal Pradesh. This finding of the Tribunal is totally erroneous and not in consonance with the orders of this Court, dated 6.5.2002, passed in CWP No.417 of 2002. The relevant portion of the order reads as follows:

> *"As a consequence of it, O.A. filed by the petitioner before the H.P. State Administrative Tribunal stands rejected as not maintainable. It is, however, clarified that the respondent Devinder Singh will be at liberty to have such recourse as is available to him under the provisions of the Industrial Disputes Act, 1947. In such a situation, the authorities concerned under the said Act will keep in view the fact that the respondent was bonafide prosecuting the litigation before the H.P. State Administrative Tribunal earlier to the decision rendered by the Division Bench of this Court.*
>
> *The writ petition is disposed of in the aforesaid terms."*

A perusal of the operative portion of the order clearly shows that this Court had not gone into the merits of the case. It was held that the learned Tribunal had no jurisdiction to entertain the original application. However, the workman was given liberty to take recourse

to such action as was available to him under the Industrial Disputes Act. This was made clear by this Court. In fact, this Court has also had gone so far to hold that the time spent by the workman in prosecuting the litigation before the Tribunal would be excluded while computing the limitation, if any. Thereafter, the workman had applied for making a reference. The reference was made and the Industrial Tribunal-cum-Labour Court was duty bound to decide this reference. The Industrial Tribunal-cum-Labour Court has abdicated its functions and has not decided the matter on a total erroneous interpretation of the judgment of this Court. We are not making any comments on the merits of the case. Whether the workman is entitled to any relief or not has to be decided by the Industrial Tribunal-cum-Labour Court only.

In view of the above discussion, we set aside the order of the Presiding Judge, Industrial Tribunal-cum-Labour Court, Dharamshala, passed in Reference No.31/2004, decided on 17.1.2006 and remand the matter to him to decide the same in accordance with law. The parties through their counsel are directed to appear before the Industrial Tribunal-cum-Labour Court on 17th December, 2007. The writ petition stands disposed of accordingly.

**CMP No.2623 of 2007:**

In view of the final disposal of the main petition, this application also stands disposed of.

**(Deepak Gupta), J.**

**November 12, 2007.** **(V.K. Ahuja), J.**
**(TILAK)**